

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
A Court Publication Supported by the Attorney Admissions Fund
Vol. VII, No. 16, August 7, 2001

Procedure

An incarcerated plaintiff filed a civil rights action against a County claiming that County officials unlawfully seized and destroyed his personal property in the course of state proceedings against real property constructed without proper permits. The County moved to dismiss for improper service and under the Rooker-Feldman doctrine, which generally bars lower federal court review of state court judgment.

Because plaintiff was indigent and proceeding pro se, the court had granted in forma pauperis status and directed that service be effected by the U.S. Marshal. The Marshal served the defendant by mail even though Oregon law requires personal service. Judge Janice M. Stewart noted the error, but held that, since there was no question that the County had been apprised of the action, the error was harmless and could be excused under ORCP 7G.

The court also denied the motion to dismiss the entire action under the Rooker-Feldman doctrine. The court found that

although portions of the claim could be construed as an attempt to seek appellate review of a state court judgment, allegations that County officials exceeded the scope of court orders was not barred. Accordingly, defendant's motion to dismiss was denied. McManama v. Clackamas County, CV 00-1387-ST (Findings and Recommendation, June 13, 2001; Adopted by Order of Judge Owen M. Panner, July 23, 2001).

Plaintiff: Pro Se

Defense Counsel:

Edward McGlone, III

Attorney Fees

After successfully defending against a claim for violation of the Oregon Trade Secrets Act, the defendant sought an award of attorney fees pursuant to ORS 646.447(1), which authorizes an award of fees if a "claim of misappropriation is made in bad faith." No published decision has defined the term "bad faith" in the context of the Oregon Trade Secrets Act, so Judge Jelderks looked to analogous fee statutes. Mattiza v. Foster, 311 Or 1

(1990), defines "bad faith" for purposes of ORS 20.105(1) as requiring that the claim be "meritless" and also that the claim was asserted for "improper purposes." Judge Jelderks concluded that, although the claim was meritless, the defendant had not shown it was asserted for improper purposes.

Consequently, the request for attorney fees was denied.

Ikon Office Solutions v. American Office Products, 00-64-JE (Opinion, July 12, 2001).

Plaintiff's Counsel:

Keith S. Dubanevich,
Kenneth L. Schubert III
Defense Counsel:

Jeffrey M. Edelson,
Matthew A. Levin

7 Following a jury trial in which a plaintiff was awarded \$87,200 in punitive damages against her former employer based upon claims of sexual harassment and retaliation, the Ninth Circuit Court of Appeals remanded the case to the district court. The Appellate Court directed the trial judge to reconsider the punitive damage verdict by examining whether

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defendant's policies constituted a good faith attempt to comply with Title VII and whether defendant's management employees could be considered proxies for the company.

Judge Ann Aiken reconsidered the punitive damage award in light of the factors outlined by the Court of Appeals and confirmed that the jury's award was justified. Plaintiff then sought attorney fees of approximately \$14,000 for time expended on the remand.

Applying a lodestar analysis, Judge Aiken approved of the plaintiff's requested hourly rate of \$200. However, she determined that the 70 hours sought were excessive given the limited nature of the remand and in comparison to hours expended by the defense. The court reduced the hours by 1/3 and awarded plaintiff \$9460 under 42 U.S.C. § 1988 and ORS 659.121. Miller v. Albertson's, Inc., CV 96-1457-AA (Opinion, July, 2001).

Plaintiff's Counsel:

Jack Oswald

Defense Counsel:

Corbett Gordon

Employment

In Kofoed v. Rosendin Electric, Inc., CV No. 00-959-KI (Opinion July 27, 2001), the plaintiff was a licensed electrician who was dispatched

through his union's hiring hall to apply for work with the defendant employer, an electrical contractor, at a local job site. The defendant's local official refused to hire the plaintiff and did not give him a reason for the rejection. Plaintiff then called the defendant's headquarters and asked a company official why he had been rejected and whether his Vietnam veteran status qualified him for any preferential treatment. When the company official refused to tell the plaintiff why he had been rejected, the plaintiff stated he "shouldn't have to hook electrodes up to a person to get the truth out of them." The defendant's official interpreted this statement as a threat, and sent a letter to the union stating that the plaintiff had suggested he could get answers to his question about why he had been rejected the way he got them in Vietnam, by hooking up electrodes to people unwilling to talk. Sometime later, another local employee of the defendant told two other employees that the plaintiff had threatened to torture a company official with electric shock treatment. Plaintiff claimed the letter and the employee's statement constituted defamation and intentionally interfered with his contractual relations with his union and other potential electrical

contractors.

Judge Garr M. King granted a defense motion for summary judgment against plaintiff's intentional interference claim and the letter-based portion of his defamation claim on the ground that those claims were preempted by Section 301 of the Labor-Management Relations Act, 29 USC 185(a). Judge King reasoned that he would need to construe various clauses in the collective bargaining agreement between the defendant and the union to resolve both the prima facie case elements of those claims and the defendant's qualified privilege defense.

Judge King also granted summary judgment against the remaining portion of the defamation claim that was based on an alleged oral statement. Judge King held that the employee's alleged statement was not actionable per se because it did not attack the plaintiff's competence to perform as an electrician, and that the plaintiff could not show any pecuniary loss because he admitted he was not aware of any company that had not hired him because of the alleged statement.

Plaintiff's Counsel:

Michael Dehner

Defense Counsel:

David Riewald

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